

DEPARTMENT OF STATE REVENUE
SUPPLEMENTAL LETTER OF FINDINGS, NUMBER 94-0794
CONTROLLED SUBSTANCE EXCISE TAX
For the Period: 1994

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ISSUE

I. Controlled Substance Excise Tax – Liability

Authority: Ind. Code § 6-7-3-5; Ind. Code § 6-8.1-5-1.

The taxpayer protests the assessment of controlled substance excise tax.

STATEMENT OF FACTS

The taxpayer was arrested by the Morgan County Sheriff's Department on September 16, 1994, for possession of marijuana. A total of 4,576 grams of marijuana was confiscated from the taxpayer. On October 3, 1994, a jeopardy assessment was made by the Department of Revenue and served on the taxpayer. The taxpayer filed a timely notice of protest of the assessment by counsel. Counsel has since notified the Department that he no longer represents the taxpayer in this matter. A hearing on the protest was scheduled for 10:00 a.m. on October 7, 1999. The taxpayer was notified of the hearing at his last known address. The taxpayer did not appear for the hearing. On November 15, 1999, the taxpayer requested a rehearing, claiming he had not received notification of the original hearing. A rehearing was granted and scheduled for 10:00 a.m. on December 16, 1999. The taxpayer failed to appear at the rehearing and has not submitted any evidence regarding this matter. Further facts will be provided as necessary.

I. Controlled Substance Excise Tax – Liability

DISCUSSION

In Indiana, the manufacture, possession, or delivery of marijuana is taxable. Ind. Code § 6-7-3-5. Since no taxes were paid on the marijuana in the taxpayer's possession, the Department of Revenue assessed the tax against the taxpayer and demanded payment. "The notice of a proposed assessment is *prima facie* evidence that the department's claim is valid." Ind. Code § 6-8.1-5-1(b). The taxpayer has the burden of proving that the proposed assessment is wrong. *Id.* Since the taxpayer did not appear at the hearing, or offer any written information in lieu of a hearing, and failed to appear at the rehearing, the Department relies on the contents of the taxpayer's file in deciding this matter. The Controlled Substance Excise Tax properly applies to the taxpayer in this case.

FINDING

The taxpayer's protest is denied.